



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500  
DENVER, COLORADO 80202-2466

00005287

JAN 7 - 1993

Ref: 8HWM-FF

Mr. Richard Schassburger,  
Department of Energy/Rocky Flats Plant  
P.O. Box 928  
Golden, CO 80402

RE: Early Warning of Pending IAG  
Violation and Stipulated  
Penalty Assessment

Dear Mr. Schassburger:

Our Interagency Agreement stipulates that the draft OU-2 RCRA Facility Investigation (RFI)/Remedial Investigation (RI) report is due to be submitted to EPA and CDH in March of 1993. Correspondence from your office (92-DOE-11364) establishes that DOE failed to undertake bedrock investigations in accordance with the approved RFI/RI Workplan, based on a DOE decision that efforts could be better directed elsewhere. As a result of this decision, made without the approval of the regulatory agencies, a substantial delay in the submittal of the RFI/RI report is now imminent and unavoidable.

Although DOE is attempting to convince EPA and CDH that IAG schedules need to be revised because of technical and procedural reasons, the regulatory agencies have no interest in reopening schedules where schedule slippage results from DOE's failure to comply with the terms of our IAG or CERCLA. In this particular instance, information obtained from the alluvial investigation during the period following the failure to implement the bedrock plan has indicated that some alterations are warranted in the nature and scope of bedrock investigations. It also seems that restructuring of the bedrock program may enable DOE to recover a portion of the lost time. We support the ongoing effort to revamp and streamline the RFI/RI in accordance with this new information, and are actively working with your staff to this end. However, despite the emergence of after-the-fact technical justifications for changing the bedrock investigation, DOE remains liable for any delay incurred as a result of a unilateral decision not to implement an approved Workplan.

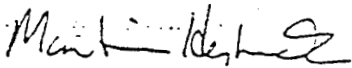
Through the IAG, DOE has agreed to pay up to \$5,000 for the first week and \$10,000 for each week thereafter for the late submittal of primary documents. National EPA enforcement policy provides that the accrual of stipulated penalties is not dependent on Agency action, but the decision to assess (enforce the obligation to pay) stipulated penalties is within our

discretion. Stipulated penalties accrue automatically from the date non-compliance begins (March 12, 1993), until such time as a satisfactory draft report is submitted. We will consider the draft RFI/RI report to have been submitted when we receive a report which documents completion of efforts as specified in approved Workplans and any subsequent approved amendments thereto. These efforts must be designed to support the decision process required to identify a final remedy for this OU and thus fulfill the Workplan objectives identified in the IAG.

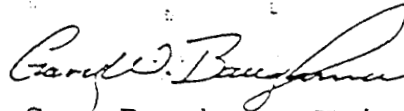
Based on the present regulatory agency understanding of this situation, we intend to assess stipulated penalties. We believe penalties are justified and consistent with established policy in this situation. Pertinent facts in this determination include; the failure to meet the OU-2 RI milestone will ultimately affect timely project completion; DOE's record of meeting originally scheduled Rocky Flats IAG milestones has been less than stellar, establishing a pattern of non-performance; and there has been a lack of good faith attempts to avoid and/or minimize delays in this case. Thus, we conclude that penalties are the appropriate mechanism to deter such delays in the future.

Please contact Bill Fraser at 294-1081 or Joe Schieffelin at 692-3356 if you have any questions on this matter.

Sincerely,



Martin Hestmark, Manager  
Rocky Flats Project  
Environmental Protection Agency



Gary Baughman, Unit Leader  
Hazardous Waste Facilities  
Colorado Dept. of Health

cc: Bill Fraser, EPA  
Joe Schieffelin, CDH  
Peter Ornstein, ORC  
Tad McCall, OFFE